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EXAMINER
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MATTHEWS, TERRELL HOWARD

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3653

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRADLEY G. VERNON and  
PATRICK D. ARNOLD

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Appeal 2009-013984  
Application 10/699,485  
Technology Center 3600

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Before JOHN C. KERINS, STEVEN D.A. McCARTHY and  
EDWARD A. BROWN, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

1           The Appellants appeal under 35 U.S.C. § 134 from the Examiner's  
2   final decision rejecting claims 4, 6-9 and 13-19 under 35 U.S.C. § 103(a) as  
3   being unpatentable over Jameson (US 5,395,148, issued March 7, 1995) and  
4   Lantz (US 1,927,873, issued July 30, 1932). We have jurisdiction under 35  
5   U.S.C. § 6(b).

6           We REVERSE.

1           Claims 4, 13 and 16 are independent claims. Claim 4 is illustrative of  
2 the claims on appeal:

- 3                   4. A magnetic rake, comprising:  
4                         one or more magnets;  
5                         a hollow, unitarily formed, toothed rake  
6                         body containing said magnets; and  
7                         a handle attached to said rake body.

8           Jameson discloses a magnetic rake or sweeper *10* including a housing  
9 *20* with a handle *50* attached to the housing *20*. (Jameson, col. 1, l. 67 – col.  
10 2, l. 2 and col. 2, ll. 60-61). Jameson’s housing *20* is generally cylindrical  
11 containing a plurality of magnets *60* therein. (Jameson, col. 3, ll. 6-8).  
12 Jameson describes the housing *20* as being formed from a non-metallic  
13 material (Jameson, col. 3, ll. 3-6) so that the magnets *60* may attract and  
14 collect metal particles on the surface of the housing *20* (*cf.* Jameson, col. 1,  
15 ll. 7-11 (describing the function of magnetic sweeping devices in general)).  
16 Jameson’s magnetic sweeper also has a cleaning cuff *100* that can be placed  
17 over the housing *20*. Jameson describes sliding the cleaning cuff *100* over  
18 the housing *20* to clean off the metal particles collected on the housing *20*.  
19 (Jameson, col. 3, ll. 19-24).

20           The Examiner finds that the magnetic rake *10*, the magnets *60*, and the  
21 handle *50* of Jameson correspond respectively to the “magnetic rake,”  
22 “magnets” and “handle” recited in claim 4. The Examiner also finds that the  
23 housing *20* of Jameson corresponds to a hollow, unitarily formed rake body  
24 containing magnets. (Ans. 4).

25           The Appellants and the Examiner agree that while Jameson describes  
26 a device referred to as a “magnetic rake,” the device does not include a  
27 toothed rake body as recited in claim 4. (*See* App. Br. 9; Ans. 4). Neither

1 does Jameson describe means for agitating a ground surface of an area as  
2 recited in claim 16. Similarly, Jameson fails to disclose operating a toothed  
3 rake body as recited in claim 13.

4 Lantz teaches a non-leaf holding rake having a toothed body *1* (Lantz  
5 1, ll. 34-53). Nevertheless, the Examiner has not articulated a reason with  
6 some rational underpinning why one of ordinary skill in the art might have  
7 added teeth to any portion of Jameson's magnetic sweeper, such as the  
8 housing *20*. One of ordinary skill in the art would have been discouraged  
9 from adding such teeth because the addition of teeth to the Jameson device  
10 would have hindered a user from sliding the cleaning cuff *100* over the  
11 housing *20*. Furthermore, one of ordinary skill in the art would have  
12 recognized that the addition of teeth to the Jameson device would have held  
13 the magnetic housing up off the surface to be swept, reducing the  
14 effectiveness of the device. (*See App. Br. 9-10*). The Examiner's  
15 conclusion that it would have been obvious to add teeth to Jameson's  
16 magnetic sweeper "so that the teeth could agitate and pull up articles from  
17 the ground" (Ans. 4) is not persuasive in view of these factors.

18 The Examiner does not persuasively explain how one of ordinary skill  
19 in the art familiar with the teachings of Lantz would have had reason to  
20 modify the rake body of Jameson in the fashion claimed in claims 4 and 16.  
21 Neither does the Examiner persuasively explain why a method including the  
22 step of operating over a surface area a hollow, unitarily formed toothed rake  
23 body as recited in claim 13 would have been obvious. We do not sustain the  
24 rejection of claims 4, 6-9 and 13-19 under § 103(a) as being unpatentable  
25 over Jameson and Lantz.

1 DECISION

2 We REVERSE the Examiner's decision rejecting claims 4, 6-9 and  
3 13-19.

4

5 REVERSED

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7 Klh